From : "Liu, Ted" <Ted.Liu@mail.house.gov>
To : "'Jeffrey Simenauer'" <simenauerlaw@hotmail.com>
Subject : RE: Interview Summary
Date : Thu, 13 Feb 2003 18:05:02 -0500

just got your summary

-----Original Message-----
From: Jeffrey Simenauer [mailto:simenauerlaw@hotmail.com]
Sent: Thursday, February 13, 2003 6:05 PM
To: Liu, Ted
Subject: Interview Summary

Ted,

Thanks again for your help in investigating PTO abuses against BlackLight Power and for accompanying us to the Patent Office for the Interview on Tuesday.

As you requested, I am forwarding to you a list of bullet points that summarize the two-hour Interview. Please review them carefully when you have time. If your recollection differs from mine, or you would like to add

any other significant points, please let me know and I will make the appropriate changes.

Also, when you are satisfied with the document, please forward it to Jeffrey

Michels in Senator Wyden's office. The Senator wanted a full report on what

took place at the Interview and I think it will be an eye-opener.

Look forward to speaking with you soon, Jeff

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From : "Liu, Ted" <Ted.Liu@mail.house.gov>
To : "'simenauerlaw@hotmail.com'" <simenauerlaw@hotmail.com>
Subject : summary
Date : Fri, 14 Feb 2003 11:20:09 -0500
Attachments : InterviewSummary.fin.doc (85k)

Jeff,

Here's my initial reaction to the summary. It's all good except for a small part of paragraph 3. If I see anything else I'll let you know. Thanks for putting it together so quickly.

<<InterviewSummary.fin.doc>>

SUMMARY OF DISCUSSIONS HELD AT THE U.S. PATENT OFFICE ON FEBRUARY 11, 2003 REGARDING BLACKLIGHT POWER PATENT APPLICATIONS

- The following bullet points summarize the discussions that took place on February 11, 2003, between representatives of BlackLight Power, Inc. ("BlackLight" or "BLP") and the U.S. Patent and Trademark Office ("PTO" or "Patent Office"). These discussions included a formal Interview regarding the patentability of pending BlackLight patent applications relating to novel hydrogen technology.

- Attending the Interview on behalf of BLP were the Applicant Dr. Randell L. Mills, his counsel Jeffrey S. Melcher and Jeffrey A. Simenauer, and BLP Director Dr. Shelby Brewer. Attending the Interview on behalf of the Patent Office were Quality Assurance Specialist Douglas McGinty, who lead the Interview, Primary Examiners Wayne Langel, Stephen Kalafut, and William Wayner, and Supervisory Primary Examiners Patrick Ryan and Stanley Silverman (referred to collectively as "the Examiners"). Also attending the Interview as an observer was Ted C. Liu, Senior Legislative Assistant for Congressman David Wu, who represents the 1st District of Oregon.

- Prior to the Interview, Mr. Liu spoke by telephone with Congressional Affairs Specialist Talis Dzenitis in the PTO's Legislative and International Affairs Office to discuss his reasons for attending the Interview. Mr. Liu explained to Specialist Dzenitis that a constituent associated with BLP had contacted Congressman Wu complaining of irregular procedures the PTO has been using in connection with the company's pending patent applications. The procedures complained of included the PTO's withdrawal of five applications approved by Examiners Langel and Kalafut for issuance as patents and the subsequent rejection of those and other BLP applications, and the use of a "secret commit" to determine the patentability of BLP's products. ~~Specifically, BLP representatives expressed concern over the role that certain competitors – the American Physical Society (APS) and its spokesman, Dr. Robert Park, in particular – may have had in influencing a secret PTO committee charged with evaluating and rejecting BLP's pending applications.~~ Specialist Dzenitis informed Mr. Liu that no such "secret committee" exists at the Patent Office.

- Following the formal phase of the Interview, Mr. Liu, Dr. Mills, and his counsel had extended discussions with Examiner Langel. During those discussions, Examiner Langel denied authoring the substantive Office Actions rejecting BLP's patent applications, even though those Actions bear his signature. Langel was the Examiner who, with over 28 years of experience, originally issued Notices of Allowance in three of BLP's withdrawn patent applications. During the extended discussion, he reaffirmed his view that BLP is entitled to patents on its novel hydrogen technology and that he wanted to issue those patents. Examiner Langel then explained, however, that there were other individuals with higher authority who were responsible for drafting the substantive Office Actions he signed and for ultimately deciding whether to issue BLP its patents.

- Examiner Langel reported that he did not know the identity of those individuals, except for one Examiner, Vasu Jagannathan, whom he described as someone who "had something to do with the Office Actions." That observation was confirmed in a PTO letter addressed to Applicant's counsel, dated February 12, 2001, identifying Examiner Jagannathan as someone who was "directly involved in the creation of the Office Action [filed in App'n Ser. No. 09/009294]." In view of Examiner Jagannathan's involvement, Applicant's counsel requested several times that the Examiner appear at the February 11 Interview so that any remaining concerns he may have over the patentability of

Applicant's novel hydrogen technology could be addressed. That request was denied and Examiner Jagannathan did not attend the Interview.

- Applicant and his counsel have been seeking information relating to the identify of all PTO personnel and outside parties who have reviewed, contributed, or otherwise been involved in, or consulted on, the creation of the substantive Office Actions rejecting BLP's pending patent applications. These Office Actions are exemplified by the September 1, 2000 Office Action and attached 9-page Appendix (Paper No. 27) and the July 3, 2001 Final Office Action with the 68-page "Attachment to Response to Applicants' Arguments" (Paper No. 34), both entered in U.S. Serial No. 09/009,294. The PTO has not only denied Applicant this information, but has also denied it to five current and former U.S. Senators—Ron Wyden, Gordon Smith, Jon Corzine, Robert Torricelli, and Max Cleland. Nor has the PTO provided any information relating to those individuals within and outside the Patent Office who might have played a role in the withdrawal from issue of BLP's five allowed patent applications. To avoid further confrontation, Applicant's counsel did not raise these issues at the present Interview, but are still seeking the requested information, which is germane to the prosecution of BLP's pending applications.

- Dr. Mills began the Interview with a general discussion of his novel hydrogen technology and a presentation of experimental evidence confirming its operability. Specifically, Dr. Mills explained how independent laboratory studies, including those conducted at Los Alamos and NASA, and other highly reliable scientific data demonstrated the existence of lower-energy states of hydrogen underlying his technology. During that presentation, the Examiners—with the exception of Examiner Langel—raised theoretical arguments why lower-energy hydrogen could not exist, but did not analyze or otherwise address to any significant degree the specific scientific data presented proving its existence. Instead, the Examiners raised general criticisms regarding the alleged unreliability of that data, which they believe justified according it little or no weight.

- Among the criticisms raised was Examiner Wayner's reference to other inventions that have been the subject of much ridicule, such as perpetual motion energy devices, cold fusion technology, and 100-miles-per-gallon carburetors. Examiner Wayner compared those technologies to BLP's novel hydrogen chemistry by asking the question: "How is your invention any different?" Applicant responded by pointing out the significant differences between those technologies. Unlike the nonsensical inventions mentioned by Examiner Wayner, Dr. Mills explained that he has a working prototype energy cell in operation and has actually produced novel chemical compounds based on his lower-energy hydrogen technology. Dr. Mills also has submitted a substantial body of corroborating experimental evidence that demonstrates the existence of lower energy states of hydrogen, which the PTO has to this day essentially ignored.

- Examiner Wayner then questioned why, if BLP's technology was such an important discovery, the company had not yet developed a commercial device for producing energy. Applicant noted the high costs associated with developing a commercial product and explained that BLP was looking to license patents for its technology to commercial businesses—assuming those patents are ever issued. Applicant's counsel then asked Examiner Wayner whether he was introducing a new patentability standard requiring BLP to produce a commercial device before he would allow a patent to issue. Examiner Wayner denied that was the case and, in response to a specific question from Mr. Liu, affirmed that indeed an Applicant does not need to prove commercial applicability to secure a patent for his invention.

- Examiner Wayner further questioned why BLP had so many detractors, specifically naming Dr. Robert Park, spokesman for Applicant's main competitor, the APS. Applicant was astonished by the Examiner's reference to Dr. Park, since he is the APS lobbyist Applicant has identified to the PTO as having a "Deep Throat" PTO contact with access to confidential information. Applicant's counsel tried raising the issue of Dr. Park's agenda and obvious motives for criticizing BLP's competing technology, namely that the APS lobbies Congress for, and ultimately receives, hundreds of millions of dollars in government funding for its pet projects. Specialist McGinty refused to discuss the matter and suggested that BLP has a "similar agenda," noting BLP's contract with NASA. Applicant corrected the Examiner, explaining that BLP does not receive any government funding for its research. Specialist McGinty had no response.

- Examiner Wayner then raised questions regarding the integrity of the scientific evidence presented by Dr. Mills. Included in that evidence was spectroscopic data, which counsel explained is tantamount to a "chemical fingerprint." Counsel further noted that even Dr. Robert Park—whom Examiner Wayner identified as BLP's chief antagonist—has proclaimed the reliability of spectroscopic data. Indeed, in a published article that the PTO has used to reject BLP's applications, Park had this to say about the reliability of spectral data:

  > The energy states of atoms are studied through their atomic spectra—light emitted at very specific wavelengths when electrons make a jump from one energy level to another. The exact prediction of the hydrogen spectrum was one of the first great triumphs of quantum theory; it is the platform on which our entire understanding of atomic physics is built. The theory accounts perfectly for every spectral line.
  >
  > There is no line corresponding to a "hydrino" state. Indeed there is no credible evidence at all to support Mills' claim. [*The Washington Post*, January 12, 2000]

- Yet when Dr. Mills tried to present this highly reliable data showing the spectral lines corresponding to a lower-energy hydrogen, *i.e.*, "hydrino," state, Examiner Wayner stated that "spectroscopic lines are meaningless" and "don't mean a hill of beans" to him.

- Specialist McGinty and Examiner Wayner then questioned Applicant about how one would know whether his scientific test data confirming the existence of lower energy states for hydrogen is accurate. Applicant responded by noting that the test data was conducted by highly qualified Ph.D. chemists, many of them representing independent laboratories. Applicant further noted that the data—which has cost BLP tens of millions of dollars to produce—has now been extensively peer-reviewed in over 50 published, or soon to be published, articles appearing in prestigious scientific journals. Among the journals specifically mentioned at the Interview were: *Journal of Applied Physics* and *Journal of Molecular Structure*.

- Applicant was shocked by the refusal of Specialist McGinty and Examiner Wayner to accept as reliable the scientific data appearing in these published journal articles. Applicant's counsel reminded the Examiners of a previous Interview held February 21, 2001, during which Applicant also presented experimental evidence of lower energy states of hydrogen. Counsel recalled how Examiner Jagannathan who led that Interview—but refused to show up to this one—advised Dr.

Mills that he would give serious consideration to evidence of lower-energy hydrogen only if it was submitted in articles for peer review and published in scientific journals.

- Applicant's counsel noted that, even though the PTO has never provided any legal authority for imposing a newly minted patentability standard requiring the publication of test data in peer-reviewed journal articles, Applicant nonetheless accepted Examiner Jagannathan's requirement. Counsel further noted that with now over 50 such articles—and another 30 on the way—Applicant has far exceeded the patentability standards improperly set by the Patent Office.

- Having met those inflated standards, Applicant's counsel expressed frustration that the PTO still refuses to seriously consider and analyze the scientific data published in the required journal articles. Specialist McGinty and Examiner Wayner indicated that they were not qualified to evaluate that data. When asked who was responsible for evaluating the data, Specialist McGinty stated it was the other Examiners of record, Langel and Kalafut.

- Specialist McGinty also asked what assurances Applicant could provide that the published data was actually peer reviewed. Applicant could only state what is a known fact—that to get scientific data published in a journal article, it must first go through a rigorous peer-review process.

- Applicant's counsel then raised the issue of changing standards for patentability that the PTO has continually imposed on Applicant through the examination process. For instance, Counsel specifically mentioned prior Office Actions claiming that Applicant's lower-energy hydrogen technology violates "physical laws" without identifying which such laws were supposedly being violated, and then requiring Applicant to prove otherwise. Counsel also read from a recent Office Action dismissing Applicant's scientific data out of hand for failing to prove the invalidity of quantum theory:

  > The request for reconsideration has been entered and considered but does not overcome the rejection . . . because there is no evidence presented which would prove applicant's contention that the theory of quantum mechanics is invalid." [October 7, 2002 Office Action entered in U.S. Serial No. 09/110,717]

- Counsel also mentioned that when Applicant recently submitted additional peer-reviewed journal articles offering further proof of lower-energy states of hydrogen—in accordance with the standards imposed by Examiner Jagannathan—the author(s) of a recent Office Action criticized that submission as being merely "cumulative."

- Expressing frustration over the PTO's lack of consistent patentability standards to guide Applicant, his counsel requested that Specialist McGinty provide such guidance. Specialist McGinty again raised his concern over the integrity of the experimental evidence and indicated that he would be more receptive to that evidence if it was validated by independent third parties. Applicant explained to Specialist McGinty that evidence dating back over four years includes independent third-party verification, to which the Specialist had no response. Applicant's counsel also pointed out that Specialist McGinty's unfounded concern over the lack of such verification demonstrates the PTO's obvious failure to have reviewed and analyzed the data in any detail.

- Further demonstrating this lack of familiarity with the record, Specialist McGinty criticized Applicant's experimental evidence as a whole by referring numerous times to the high-power plasma data. Applicant repeatedly pointed out to him that the plasma data was but a small fraction of the submitted data and that it was presented primarily to provide additional support for BLP's plasma-related applications. Most of the other scientific data submitted relates to a broad range of analytical studies demonstrating that lower energy states of hydrogen exist. For example, regarding those applications relating to novel chemical compounds, Applicant pointed Specialist McGinty to the extensive spectroscopic data supporting the identification of those compounds, but he apparently did not understand the significance of that data. For example, Specialist McGinty stated that the NMR data confirming lower-energy hydrogen could have been due to nitrogen. As Applicant explained, however, as a matter of basic chemistry, that NMR data only shows protons and no other element but hydrogen is in the data range.

- In response to Specialist McGinty's reservations over issuing Applicant his patents, Applicant's counsel raised questions regarding who had the ultimate authority to make that decision. Counsel expressed concern that the pending applications were being examined in secret and that without knowing who had the authority to issue the patents, Applicant was unfairly being denied the opportunity to present his case to the decision-maker. Specialist McGinty stated in no uncertain terms that Examiners Langel, Kalafut, and Wayner, as the signatories of the Office Actions, had "full authority" to prosecute the pending applications and to issue Applicant his patents. Notably, that statement contradicts Examiner Langel's comment following the Interview that other, unknown individuals have that authority, for if he did, Applicant already would have been granted his patents.

- Upon hearing Specialist McGinty's statement, Applicant's counsel immediately turned to Examiner Langel and asked him point blank whether, after studying the experimental evidence of record, he still believes that BlackLight's patent applications were allowable. The Examiner replied, "Yes, they're still allowable." Counsel then asked Examiner Langel whether, following the Interview, he was prepared to allow the claims and issue BlackLight its patents in those applications assigned to him, to which the Examiner replied, "fine with me."

- Specialist McGinty expressed immediate discomfort in agreeing to allow any claims at the Interview. Specifically, he raised a concern that even if the PTO ultimately found Applicant's claimed technology to be operable, there were still issues of novelty and nonobviousness to be addressed. Applicant's counsel expressed surprise by that statement given that the PTO has taken the position for years that Applicant's inventions are inoperable and that lower-energy hydrogen cannot possibly exist. Counsel pointed out the obvious contradiction in Specialist McGinty's statement that the PTO may now still need to conduct a search to see if lower-energy hydrogen does in fact exist.

- Applicant's counsel further recalled his own personal experience as an Examiner and the PTO's examination guidelines in effect at that time. When examining an application, the Examiner was expected to evaluate not only the operability of the claimed invention, but also, at the same time, the novelty and nonobviousness of that invention. Counsel again turned to Examiner Langel to confirm that this was his understanding. He replied that it was and, in fact, stated that the first thing he did was to conduct a thorough prior art search to see if he could "knock out" BLP's applications in the easiest way possible. Examiner Langel confirmed that he was unable to do so since the result of that

search turned up no applicable prior art, which is why he originally allowed the BLP applications assigned to him.

- Applicant's counsel acknowledged Specialist McGinty's position and tried by reassure him that they would work with him to alleviate any remaining concerns he might have in issuing BLP its patents. Counsel then specifically asked the Specialist to articulate how Applicant might accomplish that mutually beneficial goal. In response, Specialist McGinty indicated that, in the next Response to the pending Office Actions, Applicant should focus on identifying the experimental data derived by independent third party testing, as opposed to test data derived solely by Applicant.

- Specialist McGinty further expressed concern over whether such test data, even assumed to be reliable, was commensurate with the scope of the claims of the various applications to adequately support patentability. Applicant's counsel restated their belief that the test data did adequately support the claimed subject matter. Counsel, however, recommended that they go through the claims one-by-one with each of the assigned Examiners to see if some agreement can be reached as to those claims that are adequately supported and for which patents can be issued. As for the remaining claims that the PTO believes are not adequately supported by the scientific data, Applicant would not be prejudiced in continuing to seek broad claim coverage through continued prosecution. Specialist McGinty agreed that this sounded like a reasonable way to proceed. This understanding was memorialized in the Interview Summary Form as follows:

ATTACHMENT TO INTERVIEW SUMMARY FORM

Applicant requested that the following points discussed at the Interview held on February 11, 2003 be included as an Attachment to the Interview Summary Form.

Applicant's counsel and the Examiners in attendance at the Interview agreed to meet again at a future date, either in person or by telephone, to continue discussions regarding the patentability of Applicant's pending patent applications. Specifically, the Examiners expressed concern that Applicant's experimental evidence be commensurate with the scope of the claims. To address that concern, Applicant's counsel agreed with the Examiners to go through the patent applications claim-by-claim with the Examiners and demonstrate how the scientific data supports those claims.

For those claims that are supported by the data, the PTO agreed to issue those claims. For those claims that the PTO determines are not supported by the data, Applicant will continue to seek that broader claim coverage in subsequent proceedings.